

AMENDED IN SENATE JUNE 28, 2005
AMENDED IN SENATE JUNE 15, 2005
AMENDED IN SENATE APRIL 26, 2005
AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 923

Introduced by Senators Florez and Ashburn

February 22, 2005

An act to add Section 2087 to the Health and Safety Code, ~~and to amend Sections 17276, 17276.1, 24416, and 24416.1 of, and to add Sections 17276.8 and 24416.8 to, the Revenue and Taxation Code, relating to the West Nile virus, and relating to the West Nile virus, and~~ declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 923, as amended, Florez. ~~West Nile virus: net operating losses.~~
West Nile virus.

Existing law provides for the establishment of mosquito and vector control districts.

This bill would, to the extent emergency funds are available, or made available, require the State Department of Health Services to allocate those funds that the department receives for West Nile virus control purposes to those districts and to the department for purposes of abatement and control of mosquitos and vectors that cause the transmission of the West Nile virus, as provided.

~~The Personal Income Tax Law and the Corporation Tax Law allow a deduction for specified portions of net operating losses that, in general, are allowed to be carried forward to specified years.~~

~~This bill would, for taxable years beginning on or after January 1, 2005, allow the carryover, as defined, to specified taxable years of a net operating loss, as defined, sustained, on or after January 1, 2005, by a taxpayer that conducts a farming business that is directly affected by the West Nile virus and its vector. This bill also would require the Department of Food and Agriculture and the State Department of Health Services, as provided, to determine that the West Nile virus and its vectors caused the net operating loss for which a taxpayer seeks a net operating loss carryover. Additionally, this bill would require the Franchise Tax Board to verify a taxpayer's eligibility under the specified provisions.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2087 is added to the Health and Safety
2 Code, to read:

3 2087. (a) The Legislature finds and declares that *the* West
4 Nile virus poses a grave public health threat, and that it is
5 imperative that adequate funds be made available for purposes of
6 mosquito and vector control in order to prevent outbreaks of the
7 virus.

8 (b) Notwithstanding any other provision of law to the contrary,
9 to the extent that emergency funds are available, or made
10 available, the department shall allocate those funds that the
11 department receives for West Nile virus control purposes, as
12 follows:

13 (1) To mosquito abatement and vector control districts for
14 purposes of abatement and control of mosquitos and vectors that
15 cause the transmission of *the* West Nile virus.

16 (2) To the department for purposes of abatement and control
17 of mosquitos and vectors that cause the transmission of *the* West
18 Nile virus in those areas in this state where there are no existing
19 mosquito and vector controls.

20 ~~SEC. 2. Section 17276 of the Revenue and Taxation Code is~~
21 ~~amended to read:~~

1 ~~17276. Except as provided in Sections 17276.1, 17276.2,~~
2 ~~17276.4, 17276.5, 17276.6, 17276.7, and 17276.8, the deduction~~
3 ~~provided by Section 172 of the Internal Revenue Code, relating~~
4 ~~to a net operating loss deduction, shall be modified as follows:~~

5 ~~(a) (1) Net operating losses attributable to taxable years~~
6 ~~beginning before January 1, 1987, shall not be allowed.~~

7 ~~(2) A net operating loss shall not be carried forward to any~~
8 ~~taxable year beginning before January 1, 1987.~~

9 ~~(b) (1) Except as provided in paragraphs (2) and (3), the~~
10 ~~provisions of Section 172(b)(2) of the Internal Revenue Code,~~
11 ~~relating to the amount of carryovers, shall be modified so that the~~
12 ~~applicable percentage of the entire amount of the net operating~~
13 ~~loss for any taxable year shall be eligible for carryover to any~~
14 ~~subsequent taxable year. For purposes of this subdivision, the~~
15 ~~applicable percentage shall be:~~

16 ~~(A) Fifty percent for any taxable year beginning before~~
17 ~~January 1, 2000.~~

18 ~~(B) Fifty-five percent for any taxable year beginning on or~~
19 ~~after January 1, 2000, and before January 1, 2002.~~

20 ~~(C) Sixty percent for any taxable year beginning on or after~~
21 ~~January 1, 2002, and before January 1, 2004.~~

22 ~~(D) One hundred percent for any taxable year beginning on or~~
23 ~~after January 1, 2004.~~

24 ~~(2) In the case of a taxpayer who has a net operating loss in~~
25 ~~any taxable year beginning on or after January 1, 1994, and who~~
26 ~~operates a new business during that taxable year, each of the~~
27 ~~following shall apply to each loss incurred during the first three~~
28 ~~taxable years of operating the new business:~~

29 ~~(A) If the net operating loss is equal to or less than the net loss~~
30 ~~from the new business, 100 percent of the net operating loss shall~~
31 ~~be carried forward as provided in subdivision (d).~~

32 ~~(B) If the net operating loss is greater than the net loss from~~
33 ~~the new business, the net operating loss shall be carried over as~~
34 ~~follows:~~

35 ~~(i) With respect to an amount equal to the net loss from the~~
36 ~~new business, 100 percent of that amount shall be carried~~
37 ~~forward as provided in subdivision (d).~~

38 ~~(ii) With respect to the portion of the net operating loss that~~
39 ~~exceeds the net loss from the new business, the applicable~~

percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating

1 ~~loss after application of clause (i) of subparagraph (B) of that~~
2 ~~paragraph, paragraph (3) shall be applied to the remaining~~
3 ~~portion of the net operating loss as though that remaining portion~~
4 ~~of the net operating loss constituted the entire net operating loss.~~

5 (6) ~~For purposes of this section, the term “net loss” means the~~
6 ~~amount of net loss after application of Sections 465 and 469 of~~
7 ~~the Internal Revenue Code.~~

8 (e) ~~Net operating loss carrybacks shall not be allowed.~~

9 (d) (1) (A) ~~For a net operating loss for any taxable year~~
10 ~~beginning on or after January 1, 1987, and before January 1,~~
11 ~~2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code,~~
12 ~~relating to years to which net operating losses may be carried, is~~
13 ~~modified to substitute “five taxable years” in lieu of “20 taxable~~
14 ~~years” except as otherwise provided in paragraphs (2) and (3):~~

15 (B) ~~For a net operating loss for any taxable year beginning on~~
16 ~~or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal~~
17 ~~Revenue Code, relating to years to which net operating losses~~
18 ~~may be carried, is modified to substitute “10 taxable years” in~~
19 ~~lieu of “20 taxable years.”~~

20 (2) ~~For any taxable year beginning before January 1, 2000, in~~
21 ~~the case of a “new business,” the “five taxable years” in~~
22 ~~paragraph (1) shall be modified to read as follows:~~

23 (A) ~~“Eight taxable years” for a net operating loss attributable~~
24 ~~to the first taxable year of that new business.~~

25 (B) ~~“Seven taxable years” for a net operating loss attributable~~
26 ~~to the second taxable year of that new business.~~

27 (C) ~~“Six taxable years” for a net operating loss attributable to~~
28 ~~the third taxable year of that new business.~~

29 (3) ~~For any carryover of a net operating loss for which a~~
30 ~~deduction is denied by Section 17276.3, the carryover period~~
31 ~~specified in this subdivision shall be extended as follows:~~

32 (A) ~~By one year for a net operating loss attributable to taxable~~
33 ~~years beginning in 1991.~~

34 (B) ~~By two years for a net operating loss attributable to~~
35 ~~taxable years beginning prior to January 1, 1991.~~

36 (4) ~~The net operating loss attributable to taxable years~~
37 ~~beginning on or after January 1, 1987, and before January 1,~~
38 ~~1994, shall be a net operating loss carryover to each of the 10~~
39 ~~taxable years following the year of the loss if it is incurred by a~~
40 ~~taxpayer that is under the jurisdiction of the court in a Title 11 or~~

1 similar case at any time during the income year. The loss
2 carryover provided in the preceding sentence shall not apply to
3 any loss incurred after the date the taxpayer is no longer under
4 the jurisdiction of the court in a Title 11 or similar case.

5 (e) For purposes of this section:

6 (1) “Eligible small business” means any trade or business that
7 has gross receipts, less returns and allowances, of less than one
8 million dollars (\$1,000,000) during the taxable year.

9 (2) Except as provided in subdivision (f), “new business”
10 means any trade or business activity that is first commenced in
11 this state on or after January 1, 1994.

12 (3) “Title 11 or similar case” shall have the same meaning as
13 in Section 368(a)(3) of the Internal Revenue Code.

14 (4) In the case of any trade or business activity conducted by a
15 partnership or “S” corporation, paragraphs (1) and (2) shall be
16 applied to the partnership or “S” corporation.

17 (f) For purposes of this section, in determining whether a trade
18 or business activity qualifies as a new business under paragraph
19 (2) of subdivision (e), the following rules shall apply:

20 (1) In any case where a taxpayer purchases or otherwise
21 acquires all or any portion of the assets of an existing trade or
22 business (irrespective of the form of entity) that is doing business
23 in this state (within the meaning of Section 23101), the trade or
24 business thereafter conducted by the taxpayer (or any related
25 person) shall not be treated as a new business if the aggregate fair
26 market value of the acquired assets (including real, personal,
27 tangible, and intangible property) used by the taxpayer (or any
28 related person) in the conduct of its trade or business exceeds 20
29 percent of the aggregate fair market value of the total assets of
30 the trade or business being conducted by the taxpayer (or any
31 related person). For purposes of this paragraph only, the
32 following rules shall apply:

33 (A) The determination of the relative fair market values of the
34 acquired assets and the total assets shall be made as of the last
35 day of the first taxable year in which the taxpayer (or any related
36 person) first uses any of the acquired trade or business assets in
37 its business activity.

38 (B) Any acquired assets that constituted property described in
39 Section 1221(1) of the Internal Revenue Code in the hands of the
40 transferor shall not be treated as assets acquired from an existing

trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person):

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities:

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (c):

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision:

(5) “Related person” shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code:

(6) “Acquire” shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration:

(7) (A) For taxable years beginning on or after January 1, 1997, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by

1 the United States Office of Management and Budget, 1987
2 edition, and as further amended, and that has not received
3 regulatory approval for any product from the United States Food
4 and Drug Administration.

5 (B) For purposes of this paragraph:

6 (i) “Biopharmaceutical activities” means those activities that
7 use organisms or materials derived from organisms, and their
8 cellular, subcellular, or molecular components, in order to
9 provide pharmaceutical products for human or animal
10 therapeutics and diagnostics. Biopharmaceutical activities make
11 use of living organisms to make commercial products, as
12 opposed to pharmaceutical activities that make use of chemical
13 compounds to produce commercial products.

14 (ii) “Other biotechnology activities” means activities
15 consisting of the application of recombinant DNA technology to
16 produce commercial products, as well as activities regarding
17 pharmaceutical delivery systems designed to provide a measure
18 of control over the rate, duration, and site of pharmaceutical
19 delivery.

20 (g) In computing the modifications under Section 172(d)(2) of
21 the Internal Revenue Code, relating to capital gains and losses of
22 taxpayers other than corporations, the exclusion provided by
23 Section 18152.5 shall not be allowed.

24 (h) Notwithstanding any provisions of this section to the
25 contrary, a deduction shall be allowed to a “qualified taxpayer”
26 as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5,
27 17276.6, 17276.7, and 17276.8.

28 (i) The Franchise Tax Board may prescribe appropriate
29 regulations to carry out the purposes of this section, including
30 any regulations necessary to prevent the avoidance of the
31 purposes of this section through splitups, shell corporations,
32 partnerships, tiered ownership structures, or otherwise.

33 (j) The Franchise Tax Board may reclassify any net operating
34 loss carryover determined under either paragraph (2) or (3) of
35 subdivision (b) as a net operating loss carryover under paragraph
36 (1) of subdivision (b) upon a showing that the reclassification is
37 necessary to prevent evasion of the purposes of this section.

38 (k) Except as otherwise provided, the amendments made by
39 Chapter 107 of the Statutes of 2000 shall apply to net operating
40 losses for taxable years beginning on or after January 1, 2000.

1 ~~SEC. 3. Section 17276.1 of the Revenue and Taxation Code~~
2 ~~is amended to read:~~

3 ~~17276.1. (a) A qualified taxpayer, as defined in Section~~
4 ~~17276.2, 17276.4, 17276.5, 17276.6, 17276.7, or 17276.8, may~~
5 ~~elect to take the deduction provided by Section 172 of the~~
6 ~~Internal Revenue Code, relating to the net operating loss~~
7 ~~deduction, as modified by Section 17276, with the following~~
8 ~~exceptions:~~

9 ~~(1) Subdivision (a) of Section 17276, relating to years in~~
10 ~~which allowable losses are sustained, shall not be applicable.~~

11 ~~(2) Subdivision (b) of Section 17276, relating to the~~
12 ~~50-percent reduction of losses, shall not be applicable.~~

13 ~~(b) The election to compute the net operating loss under this~~
14 ~~section shall be made in a statement attached to the original~~
15 ~~return, timely filed for the year in which the net operating loss is~~
16 ~~incurred and shall be irrevocable. In addition to the exceptions~~
17 ~~specified in subdivision (a), the provisions of Section 17276.2,~~
18 ~~17276.4, 17276.5, 17276.6, 17276.7, or 17276.8, as appropriate,~~
19 ~~shall be applicable.~~

20 ~~(c) Any carryover of a net operating loss sustained by a~~
21 ~~qualified taxpayer, as defined in subdivision (a) or (b) of Section~~
22 ~~17276.2 as that section read immediately prior to January 1,~~
23 ~~1997, shall, if previously elected, continue to be a deduction, as~~
24 ~~provided in subdivision (a), applied as if the provisions of~~
25 ~~subdivision (a) or (b) of Section 17276.2, as that section read~~
26 ~~prior to January 1, 1997, still applied.~~

27 ~~SEC. 4. Section 17276.8 is added to the Revenue and~~
28 ~~Taxation Code, to read:~~

29 ~~17276.8. (a) The term “qualified taxpayer” as used in~~
30 ~~Section 17276.1 includes a person or entity that conducts a~~
31 ~~farming business that is directly affected by the West Nile virus~~
32 ~~and its vectors.~~

33 ~~(b) For purposes of this section, all of the following apply:~~

34 ~~(1) A net operating loss shall not be a net operating loss~~
35 ~~carryback to any taxable year, and a net operating loss for any~~
36 ~~taxable year beginning on or after the date that the area in which~~
37 ~~the taxpayer conducts a business is affected by the West Nile~~
38 ~~virus and its vectors shall be a net operating loss carryover to~~
39 ~~each of the nine taxable years following the taxable year of loss,~~
40 ~~until used.~~

~~(2) For purposes of this subdivision all of the following apply:~~

~~(A) “Net operating loss” means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer’s farming business activities affected by the West Nile virus. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this subdivision, as follows:~~

~~(i) A loss shall be apportioned to the area affected by the West Nile virus and its vectors by multiplying the total loss from the farming business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.~~

~~(ii) “The area affected by the West Nile virus and its vectors” shall be substituted for “this state.”~~

~~(B) A net operating loss carryover computed under this section shall be allowed as a deduction only with respect to the taxpayer’s farming business income attributable to the area affected by the West Nile virus and its vectors.~~

~~(C) Attributable income is that portion of the taxpayer’s California source farming business income that is apportioned to the area affected by the West Nile virus and its vectors. For that purpose, that taxpayer’s farming business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That farming business income shall be further apportioned to the area affected by the West Nile virus and its vectors in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this subdivision as follows:~~

~~(i) Farming business income shall be apportioned to the area affected by the West Nile virus and its vectors by multiplying the total California farming business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph both of the following apply:~~

~~(I) The property factor is a fraction, the numerator of which is the average value of the taxpayer’s real and tangible personal property owned or rented and used in the area affected by the West Nile virus and its vectors during the taxable year, and the denominator of which is the average value of all the taxpayer’s~~

1 ~~real and tangible personal property owned or rented and used in~~
2 ~~this state during the taxable year.~~

3 ~~(II) The payroll factor is a fraction, the numerator of which is~~
4 ~~the total amount paid by the taxpayer in the area affected by the~~
5 ~~West Nile virus and its vectors during the taxable year for~~
6 ~~compensation, and the denominator of which is the total~~
7 ~~compensation paid by the taxpayer in this state during the taxable~~
8 ~~year.~~

9 ~~(ii) If a loss carryover is allowable pursuant to this section for~~
10 ~~any taxable year after the West Nile virus and its vectors have~~
11 ~~occurred, the area affected by the West Nile virus and its vectors~~
12 ~~shall be deemed to remain in existence for purposes of~~
13 ~~computing the limitation set forth in subparagraph (B) and~~
14 ~~allowing a net operating loss deduction.~~

15 ~~(c) A taxpayer who qualifies as a “qualified taxpayer” under~~
16 ~~one or more sections shall, for the taxable year of the net~~
17 ~~operating loss and any taxable year to which that net operating~~
18 ~~loss may be carried, designate on the original return filed for~~
19 ~~each year the section that applies to that taxpayer with respect to~~
20 ~~that net operating loss. If the taxpayer is eligible to qualify under~~
21 ~~more than one section, the designation is to be made after taking~~
22 ~~into account subdivision (d).~~

23 ~~(d) If a taxpayer is eligible to compute its net operating loss~~
24 ~~under this section and either Section 17276.2, 17276.4, 17276.5,~~
25 ~~17276.6, or 17276.7, as a “qualified taxpayer,” with respect to a~~
26 ~~net operating loss in a taxable year, the taxpayer shall designate~~
27 ~~which section is to apply to the taxpayer.~~

28 ~~(e) Notwithstanding Section 17276, the amount of the loss~~
29 ~~determined under this section or Section 17276.2, 17276.4,~~
30 ~~17276.5, 17276.6, or 17276.7 shall be the only net operating loss~~
31 ~~allowed to be carried over from that taxable year and the~~
32 ~~designation under subdivision (c) shall be included in the election~~
33 ~~under Section 17276.1.~~

34 ~~(f) (1) A qualified taxpayer may utilize the net operating loss~~
35 ~~carryover allowed by this section only if the Department of Food~~
36 ~~and Agriculture or the State Department of Health Services~~
37 ~~confirms that the taxpayer’s farming business was affected by the~~
38 ~~West Nile virus and its vectors during the year for which the~~
39 ~~qualified taxpayer seeks a deduction under this section.~~

~~(2) To make the determination required by this subdivision, the Department of Food and Agriculture and the State Department of Health Services shall develop regulations relating to the West Nile virus and its vectors.~~

~~(3) The Franchise Tax Board shall develop a management agreement with the cooperation of the Department of Food and Agriculture and the State Department of Health Services to establish procedures by which the Franchise Tax Board secures the information. This subdivision shall not be construed to require the Department of Food and Agriculture or the State Department of Health Services to confirm more than the fact that the taxpayer's farming business was affected by the West Nile virus and its vectors during the year for which the qualified taxpayer seeks a deduction.~~

~~(4) The Franchise Tax Board shall verify the taxpayer's eligibility to use a net operating loss carryover. Verification that the taxpayer's farming business was affected by the West Nile virus and its vectors during the year for which the qualified taxpayer seeks a deduction includes:~~

~~(A) For equine cases of West Nile virus, verification that the taxpayer's farming business was affected shall include records of veterinary expenses incurred as a result of the West Nile virus. Veterinary expenses are the costs of the diagnosis, cure, mitigation, treatment, or prevention of the West Nile virus. Records of veterinary expenses may include billing statements, bills, cancelled checks, cash receipts, invoices, and receipts.~~

~~(B) For human cases of West Nile virus, verification that the taxpayer's farming business was affected shall include records of medical expenses incurred as a result of the West Nile virus. Medical expenses are the costs of the diagnosis, cure, mitigation, treatment, or prevention of the West Nile virus. Records of medical expenses may include billing statements, bills, cancelled checks, cash receipts, invoices, and receipts.~~

~~(g) This section applies to net operating losses attributable to taxable years beginning on or after January 1, 2005.~~

~~SEC. 5. Section 24416 of the Revenue and Taxation Code is amended to read:~~

~~24416. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.8, a net operating loss deduction shall be allowed in computing net~~

~~income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.~~

~~(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.~~

~~(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.~~

~~(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:~~

~~(A) Fifty percent for any taxable year beginning before January 1, 2000.~~

~~(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.~~

~~(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.~~

~~(D) One hundred percent for any taxable year beginning on or after January 1, 2004.~~

~~(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:~~

~~(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (c).~~

~~(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:~~

~~(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (c).~~

~~(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).~~

1 ~~(C) For purposes of Section 172(b)(2) of the Internal Revenue~~
2 ~~Code, the amount described in clause (ii) of subparagraph (B)~~
3 ~~shall be absorbed before the amount described in clause (i) of~~
4 ~~subparagraph (B).~~

5 ~~(3) In the case of a taxpayer who has a net operating loss in~~
6 ~~any taxable year beginning on or after January 1, 1994, and who~~
7 ~~operates an eligible small business during that taxable year, each~~
8 ~~of the following shall apply:~~

9 ~~(A) If the net operating loss is equal to or less than the net loss~~
10 ~~from the eligible small business, 100 percent of the net operating~~
11 ~~loss shall be carried forward to the taxable years specified in~~
12 ~~paragraph (1) of subdivision (c).~~

13 ~~(B) If the net operating loss is greater than the net loss from~~
14 ~~the eligible small business, the net operating loss shall be carried~~
15 ~~over as follows:~~

16 ~~(i) With respect to an amount equal to the net loss from the~~
17 ~~eligible small business, 100 percent of that amount shall be~~
18 ~~carried forward as provided in subdivision (c).~~

19 ~~(ii) With respect to that portion of the net operating loss that~~
20 ~~exceeds the net loss from the eligible small business, the~~
21 ~~applicable percentage of that amount shall be carried forward as~~
22 ~~provided in subdivision (c).~~

23 ~~(C) For purposes of Section 172(b)(2) of the Internal Revenue~~
24 ~~Code, the amount described in clause (ii) of subparagraph (B)~~
25 ~~shall be absorbed before the amount described in clause (i) of~~
26 ~~subparagraph (B).~~

27 ~~(4) In the case of a taxpayer who has a net operating loss in a~~
28 ~~taxable year beginning on or after January 1, 1994, and who~~
29 ~~operates a business that qualifies as both a new business and an~~
30 ~~eligible small business under this section, that business shall be~~
31 ~~treated as a new business for the first three taxable years of the~~
32 ~~new business.~~

33 ~~(5) In the case of a taxpayer who has a net operating loss in a~~
34 ~~taxable year beginning on or after January 1, 1994, and who~~
35 ~~operates more than one business, and more than one of those~~
36 ~~businesses qualifies as either a new business or an eligible small~~
37 ~~business under this section, paragraph (2) shall be applied first,~~
38 ~~except that if there is any remaining portion of the net operating~~
39 ~~loss after application of clause (i) of subparagraph (B) of~~
40 ~~paragraph (2), paragraph (3) shall be applied to the remaining~~

1 portion of the net operating loss as though that remaining portion
2 of the net operating loss constituted the entire net operating loss.

3 (6) For purposes of this section, “net loss” means the amount
4 of net loss after application of Sections 465 and 469 of the
5 Internal Revenue Code.

6 (e) For any taxable year in which the taxpayer has in effect a
7 water’s-edge election under Section 25110, the deduction of a net
8 operating loss carryover shall be denied to the extent that the net
9 operating loss carryover was determined by taking into account
10 the income and factors of an affiliated corporation in a combined
11 report whose income and apportionment factors would not have
12 been taken into account if a water’s-edge election under Section
13 25110 had been in effect for the taxable year in which the loss
14 was incurred.

15 (d) Net operating loss carrybacks shall not be allowed.

16 (e) (1) (A) For a net operating loss for any taxable year
17 beginning on or after January 1, 1987, and before January 1,
18 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code,
19 relating to years to which net operating losses may be carried, is
20 modified to substitute “five taxable years” in lieu of “20 years”
21 except as otherwise provided in paragraphs (2), (3), and (4):

22 (B) For a net operating loss for any income year beginning on
23 or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal
24 Revenue Code, relating to years to which net operating losses
25 may be carried, is modified to substitute “10 taxable years” in
26 lieu of “20 taxable years.”

27 (2) For any income year beginning before January 1, 2000, in
28 the case of a “new business,” the “five taxable years” referred to
29 in paragraph (1) shall be modified to read as follows:

30 (A) “Eight taxable years” for a net operating loss attributable
31 to the first taxable year of that new business.

32 (B) “Seven taxable years” for a net operating loss attributable
33 to the second taxable year of that new business.

34 (C) “Six taxable years” for a net operating loss attributable to
35 the third taxable year of that new business.

36 (3) For any carryover of a net operating loss for which a
37 deduction is denied by Section 24416.3, the carryover period
38 specified in this subdivision shall be extended as follows:

39 (A) By one year for a net operating loss attributable to taxable
40 years beginning in 1991.

~~(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.~~

~~(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:~~

~~(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.~~

~~(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.~~

~~(f) For purposes of this section:~~

~~(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the income year.~~

~~(2) Except as provided in subdivision (g), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.~~

~~(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.~~

~~(4) In the case of any trade or business activity conducted by a partnership or an “S” corporation, paragraphs (1) and (2) shall be applied to the partnership or “S” corporation.~~

~~(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:~~

~~(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20~~

1 percent of the aggregate fair market value of the total assets of
2 the trade or business being conducted by the taxpayer (or any
3 related person). For purposes of this paragraph only, the
4 following rules shall apply:

5 (A) The determination of the relative fair market values of the
6 acquired assets and the total assets shall be made as of the last
7 day of the first taxable year in which the taxpayer (or any related
8 person) first uses any of the acquired trade or business assets in
9 its business activity.

10 (B) Any acquired assets that constituted property described in
11 Section 1221(1) of the Internal Revenue Code in the hands of the
12 transferor shall not be treated as assets acquired from an existing
13 trade or business, unless those assets also constitute property
14 described in Section 1221(1) of the Internal Revenue Code in the
15 hands of the acquiring taxpayer (or related person).

16 (2) In any case where a taxpayer (or any related person) is
17 engaged in one or more trade or business activities in this state,
18 or has been engaged in one or more trade or business activities in
19 this state within the preceding 36 months ("prior trade or
20 business activity"), and thereafter commences an additional trade
21 or business activity in this state, the additional trade or business
22 activity shall only be treated as a new business if the additional
23 trade or business activity is classified under a different division
24 of the Standard Industrial Classification (SIC) Manual published
25 by the United States Office of Management and Budget, 1987
26 edition, than are any of the taxpayer's (or any related person's)
27 current or prior trade or business activities.

28 (3) In any case where a taxpayer, including all related persons,
29 is engaged in trade or business activities wholly outside of this
30 state and the taxpayer first commences doing business in this
31 state (within the meaning of Section 23101) after December 31,
32 1993 (other than by purchase or other acquisition described in
33 paragraph (1)), the trade or business activity shall be treated as a
34 new business under paragraph (2) of subdivision (c).

35 (4) In any case where the legal form under which a trade or
36 business activity is being conducted is changed, the change in
37 form shall be disregarded and the determination of whether the
38 trade or business activity is a new business shall be made by
39 treating the taxpayer as having purchased or otherwise acquired

1 all or any portion of the assets of an existing trade or business
2 under the rules of paragraph (1) of this subdivision.

3 (5) “Related person” shall mean any person that is related to
4 the taxpayer under either Section 267 or 318 of the Internal
5 Revenue Code.

6 (6) “Acquire” shall include any transfer, whether or not for
7 consideration.

8 (7) (A) For taxable years beginning on or after January 1,
9 1997, the term “new business” shall include any taxpayer that is
10 engaged in biopharmaceutical activities or other biotechnology
11 activities that are described in Codes 2833 to 2836, inclusive, of
12 the Standard Industrial Classification (SIC) Manual published by
13 the United States Office of Management and Budget, 1987
14 edition, and as further amended, and that has not received
15 regulatory approval for any product from the United States Food
16 and Drug Administration.

17 (B) For purposes of this paragraph:

18 (i) “Biopharmaceutical activities” means those activities that
19 use organisms or materials derived from organisms, and their
20 cellular, subcellular, or molecular components, in order to
21 provide pharmaceutical products for human or animal
22 therapeutics and diagnostics. Biopharmaceutical activities make
23 use of living organisms to make commercial products, as
24 opposed to pharmaceutical activities that make use of chemical
25 compounds to produce commercial products.

26 (ii) “Other biotechnology activities” means activities
27 consisting of the application of recombinant DNA technology to
28 produce commercial products, as well as activities regarding
29 pharmaceutical delivery systems designed to provide a measure
30 of control over the rate, duration, and site of pharmaceutical
31 delivery.

32 (h) For purposes of corporations whose net income is
33 determined under Chapter 17 (commencing with Section 25101),
34 Section 25108 shall apply to each of the following:

35 (1) The amount of net operating loss incurred in any taxable
36 year that may be carried forward to another taxable year.

37 (2) The amount of any loss carry forward that may be
38 deducted in any taxable year.

1 ~~(i) The provisions of Section 172(b)(1)(D) of the Internal~~
2 ~~Revenue Code, relating to bad debt losses of commercial banks,~~
3 ~~shall not be applicable.~~

4 ~~(j) The Franchise Tax Board may prescribe appropriate~~
5 ~~regulations to carry out the purposes of this section, including~~
6 ~~any regulations necessary to prevent the avoidance of the~~
7 ~~purposes of this section through splitups, shell corporations,~~
8 ~~partnerships, tiered ownership structures, or otherwise.~~

9 ~~(k) The Franchise Tax Board may reclassify any net operating~~
10 ~~loss carryover determined under either paragraph (2) or (3) of~~
11 ~~subdivision (b) as a net operating loss carryover under paragraph~~
12 ~~(1) of subdivision (b) upon a showing that the reclassification is~~
13 ~~necessary to prevent evasion of the purposes of this section.~~

14 ~~(l) Except as otherwise provided, the amendments made by~~
15 ~~Chapter 107 of the Statutes of 2000 shall apply to net operating~~
16 ~~losses for taxable years beginning on or after January 1, 2000.~~

17 ~~SEC. 6. Section 24416.1 of the Revenue and Taxation Code~~
18 ~~is amended to read:~~

19 ~~24416.1. (a) A qualified taxpayer, as defined in Section~~
20 ~~24416.2, 24416.4, 24416.5, 24416.6, 24416.7, or 24416.8, may~~
21 ~~elect to take the deduction provided by Section 172 of the~~
22 ~~Internal Revenue Code, relating to the net operating loss~~
23 ~~deduction, as modified by Section 24416, in computing net~~
24 ~~income under Section 24341, with the following exceptions to~~
25 ~~Section 24416:~~

26 ~~(1) Subdivision (a) of Section 24416, relating to years in~~
27 ~~which allowable losses are sustained, shall not be applicable.~~

28 ~~(2) Subdivision (b) of Section 24416, relating to the~~
29 ~~50-percent reduction of losses, shall not be applicable.~~

30 ~~(3) The provisions of subparagraphs (B) and (C) of Section~~
31 ~~172 (b) (1) of the Internal Revenue Code shall not apply. To the~~
32 ~~extent applicable to California law, net operating losses~~
33 ~~attributable to entities with losses described by Section~~
34 ~~172(b)(1)(J) shall be applied in accordance with Section~~
35 ~~172(b)(1)(A) and (B) of the Internal Revenue Code.~~

36 ~~(b) Corporations whose income is subject to the provisions of~~
37 ~~Section 25101 or 25101.15 shall make the computations required~~
38 ~~by Section 25108.~~

39 ~~(c) The election to compute the net operating loss under this~~
40 ~~section shall be made in a statement attached to the original~~

1 return, timely filed for the year in which the net operating loss is
2 incurred and shall be irrevocable. In addition to the exceptions
3 specified in subdivision (a), Section 24416.2, 24416.4, 24416.5,
4 24416.6, 24416.7, or 24416.8, as appropriate, shall be applicable.

5 (d) Any carryover of a net operating loss sustained by a
6 qualified taxpayer, as defined in subdivision (a) or (b) of Section
7 24416.2 as that section read immediately prior to January 1,
8 1997, shall, if previously elected, continue to be a deduction, as
9 provided in subdivision (a), applied as if the provisions of
10 subdivision (a) or (b) of Section 24416.2, as that section read
11 prior to January 1, 1997, still applied.

12 SEC. 7. Section 24416.8 is added to the Revenue and
13 Taxation Code, to read:

14 24416.8. (a) The term “qualified taxpayer” as used in
15 Section 24416.1 includes a corporation that conducts a farming
16 business that is directly affected by the West Nile virus and its
17 vectors.

18 (b) For purposes of this section, all of the following apply:

19 (1) A net operating loss shall not be a net operating loss
20 carryback to any taxable year, and a net operating loss for any
21 taxable year beginning on or after the date that the area in which
22 the taxpayer conducts a business is affected by the West Nile
23 virus and its vectors shall be a net operating loss carryover to
24 each of the nine taxable years following the taxable year of loss,
25 until used.

26 (2) For purposes of this subdivision all of the following apply:

27 (A) “Net operating loss” means the loss determined under
28 Section 172 of the Internal Revenue Code, as modified by
29 Section 24416.1, attributable to the taxpayer’s farming business
30 activities affected by the West Nile virus. That attributable loss
31 shall be determined in accordance with Chapter 17 (commencing
32 with Section 25101) of Part 11, modified for purposes of this
33 subdivision, as follows:

34 (i) A loss shall be apportioned to the area affected by the West
35 Nile virus and its vectors by multiplying the total loss from the
36 farming business by a fraction, the numerator of which is the
37 property factor plus the payroll factor, and the denominator of
38 which is two.

39 (ii) “The area affected by the West Nile virus and its vectors”
40 shall be substituted for “this state.”

1 ~~(B) A net operating loss carryover computed under this section~~
2 ~~shall be allowed as a deduction only with respect to the~~
3 ~~taxpayer's farming business income attributable to the area~~
4 ~~affected by the West Nile virus and its vectors.~~

5 ~~(C) Attributable income is that portion of the taxpayer's~~
6 ~~California source farming business income that is apportioned to~~
7 ~~the area affected by the West Nile virus and its vectors. For that~~
8 ~~purpose, that taxpayer's farming business income attributable to~~
9 ~~sources in this state first shall be determined in accordance with~~
10 ~~Chapter 17 (commencing with Section 25101) of Part 11. That~~
11 ~~farming business income shall be further apportioned to the area~~
12 ~~affected by the West Nile virus and its vectors in accordance with~~
13 ~~Article 2 (commencing with Section 25120) of Chapter 17 of~~
14 ~~Part 11, modified for purposes of this subdivision as follows:~~

15 ~~(i) Farming business income shall be apportioned to the area~~
16 ~~affected by the West Nile virus and its vectors by multiplying the~~
17 ~~total California farming business income of the taxpayer by a~~
18 ~~fraction, the numerator of which is the property factor plus the~~
19 ~~payroll factor, and the denominator of which is two. For purposes~~
20 ~~of this paragraph both of the following apply:~~

21 ~~(I) The property factor is a fraction, the numerator of which is~~
22 ~~the average value of the taxpayer's real and tangible personal~~
23 ~~property owned or rented and used in the area affected by the~~
24 ~~West Nile virus and its vectors during the taxable year, and the~~
25 ~~denominator of which is the average value of all the taxpayer's~~
26 ~~real and tangible personal property owned or rented and used in~~
27 ~~this state during the taxable year.~~

28 ~~(II) The payroll factor is a fraction, the numerator of which is~~
29 ~~the total amount paid by the taxpayer in the area affected by the~~
30 ~~West Nile virus and its vectors during the taxable year for~~
31 ~~compensation, and the denominator of which is the total~~
32 ~~compensation paid by the taxpayer in this state during the taxable~~
33 ~~year.~~

34 ~~(ii) If a loss carryover is allowable pursuant to this section for~~
35 ~~any taxable year after the West Nile virus and its vectors have~~
36 ~~occurred, the area affected by the West Nile virus and its vectors~~
37 ~~shall be deemed to remain in existence for purposes of~~
38 ~~computing the limitation set forth in subparagraph (B) and~~
39 ~~allowing a net operating loss deduction.~~

~~(e) A taxpayer who qualifies as a “qualified taxpayer” under one or more sections shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the original return filed for each year the section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (d).~~

~~(d) If a taxpayer is eligible to compute its net operating loss under this section and either Section 24416.2, 24416.4, 24416.5, 24416.6, or 24416.7, as a “qualified taxpayer,” with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.~~

~~(e) Notwithstanding Section 24416, the amount of the loss determined under this section or Section 24416.2, 24416.4, 24416.5, 24416.6, or 24416.7 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (c) shall be included in the election under Section 24416.1.~~

~~(f) (1) A qualified taxpayer may utilize the net operating loss carryover allowed by this section only if the Department of Food and Agriculture or the State Department of Health Services confirms that the taxpayer’s farming business was affected by the West Nile virus and its vectors during the year for which the qualified taxpayer seeks a deduction under this section.~~

~~(2) To make the determination required by this subdivision, the Department of Food and Agriculture and the State Department of Health Services shall develop regulations relating to the West Nile virus and its vectors.~~

~~(3) The Franchise Tax Board shall develop a management agreement with the cooperation of the Department of Food and Agriculture and the State Department of Health Services to establish procedures by which the Franchise Tax Board secures the information. This subdivision shall not be construed to require the Department of Food and Agriculture or the State Department of Health Services to confirm more than the fact that the taxpayer’s farming business was affected by the West Nile virus and its vectors during the year for which the qualified taxpayer seeks a deduction.~~

1 ~~(4) The Franchise Tax Board shall verify the taxpayer's~~
2 ~~eligibility to use the net operating loss carryover. Verification~~
3 ~~that the taxpayer's farming business was affected by the West~~
4 ~~Nile virus and its vectors during the year for which the qualified~~
5 ~~taxpayer seeks a deduction includes:~~

6 ~~(A) For equine cases of West Nile virus, verification that the~~
7 ~~taxpayer's farming business was affected shall include records of~~
8 ~~veterinary expenses incurred as a result of the West Nile virus.~~
9 ~~Veterinary expenses are the costs of the diagnosis, cure,~~
10 ~~mitigation, treatment, or prevention of the West Nile virus.~~
11 ~~Records of veterinary expenses may include billing statements,~~
12 ~~bills, cancelled checks, cash receipts, invoices, and receipts.~~

13 ~~(B) For human cases of West Nile virus, verification that the~~
14 ~~taxpayer's farming business was affected shall include records of~~
15 ~~medical expenses incurred as a result of the West Nile virus.~~
16 ~~Medical expenses are the costs of the diagnosis, cure, mitigation,~~
17 ~~treatment, or prevention of the West Nile virus. Records of~~
18 ~~medical expenses may include billing statements, bills, cancelled~~
19 ~~checks, cash receipts, invoices, and receipts.~~

20 ~~(g) This section applies to net operating losses attributable to~~
21 ~~taxable years beginning on or after January 1, 2005.~~

22 ~~SEC. 8.—~~

23 *SEC. 2.* This act is an urgency statute necessary for the
24 immediate preservation of the public peace, health, or safety
25 within the meaning of Article IV of the Constitution and shall go
26 into immediate effect. The facts constituting the necessity are:

27 ~~In order to prevent outbreaks of West Nile virus, and to~~
28 ~~provide essential relief to persons who suffer damage as a result~~
29 ~~of the virus, it is necessary that this act take effect immediately.~~

30 *In order to prevent outbreaks of the West Nile virus, it is*
31 *necessary that this act take effect immediately.*